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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA, ) CR. NO. S-04-095-MCE  
12 ) CR. NO. S-03-374-MCE  
Plaintiff, )  
13 )  
v. ) GOVERNMENT'S RESPONSE TO  
14 ) DEFENDANT'S SENTENCING  
NICHOLAS WILLIAM BLASGEN, ) MEMORANDUM  
15 )  
16 Defendant. )  
17 ) Date: August 30, 2005  
18 ) Time: 8:30 a.m.  
19 ) Hon. Morrison C. England, Jr.  
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19 Plaintiff, the United States of America, files this response  
20 to the Defendant's Sentencing Memorandum. The defendant raises  
21 two issues in his memorandum: (1) the Presentence Investigation  
22 Report misstates a fact concerning the defendant's pre-trial  
23 computer access, and (2) a lesser fine should be imposed.  
24 Nothing the defendant raised suggests that the sentence should be  
25 anything other than 30 months incarceration at the low end of the  
26 applicable sentencing range, a three year period of supervised  
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1 release, and a \$30,000 fine at the mid-range of the applicable  
2 guidelines.

3 The defendant raises an issue with paragraph 10 of the  
4 Presentence Investigation Report, in particular whether the  
5 defendant accessed his email from a computer, other than his own,  
6 the weekend before his guilty plea. The defense acknowledges  
7 that this "does not compel a formal objection under the local  
8 rules . . . " and should therefore not be considered.  
9 Defendant's Sentencing Memorandum at 3.

10 Furthermore, the extent of the factual dispute is limited to  
11 essentially a pronoun. In a conversation I had with the  
12 defendant's Pretrial Services Officer, Sandra Hall, she indicated  
13 that paragraph 10 should be changed to reflect that "they checked  
14 his email" instead of "he checked his email" to reflect that the  
15 parents admitted they accessed the defendant's email. What is  
16 undisputed is that a computer other than the defendant's was used  
17 to access his email the weekend before his guilty plea. To the  
18 extent there is a factual dispute, it does not justify any  
19 material change in the defendant's sentencing.

20 As to the imposition of a \$30,000 fine, the fine is  
21 appropriate in light of the language in the plea agreement that  
22 the "defendant agrees to pay a fine as directed by the United  
23 States Probation Office based on his present and future ability  
24 to pay a criminal fine." Moreover, the parties have agreed and  
25 hereby stipulate that this fine is appropriate based on the  
26 language in the plea agreement and the fact that the fine is at  
27 the mid-range of the applicable sentencing guidelines. Defense

1 counsel is expected to withdraw her objection to the imposition  
2 of the \$30,000 fine at the sentencing hearing.

3  
4 **Conclusion**

5 Accordingly, the government requests that this Court order  
6 the defendant to pay a \$30,000 fine and be sentenced to the low  
7 end of the applicable sentencing guidelines as agreed to by the  
8 parties and as recommended in the Presentence Investigation  
9 Report.

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13 Respectfully submitted,

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15 DATED: August 29, 2005

McGREGOR W. SCOTT  
United States Attorney

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17 By: \_\_\_\_\_/s/\_\_\_\_\_  
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